

<p>DISTRICT COURT, ADAMS COUNTY, COLORADO 1100 Judicial Center Drive Brighton, Colorado 80601</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>K.M.R. HARTNACK, INC., D/B/A AMERICAN ENGINE INSTALLATIONS., a Texas Corporation, DISCOUNT ENGINE CENTERS, INC., a Colorado Corporation, also dba AMERICAN ENGINE INSTALLATIONS; JOHN K. HARTNACK, TIMOTHY M. GEMELLI, and CHARLES J. GEMELLI, Individually,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General OLIVIA C. DEBLASIO, 35867* Assistant Attorney General JAY B. SIMONSON, 24077* Assistant Attorney General ANDREW P. MCCALLIN, 20909* First Assistant Attorney General 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.:</p>
<p style="text-align: center;">COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 through -1001, C.R.S. (2006) (“CCPA”), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for statutorily-mandated civil penalties, for disgorgement, and for other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly-appointed Attorney General of the State of Colorado and is authorized under § 6-1-103, C.R.S. (2006), to enforce the provisions of the CCPA.

3. Defendant K.M.R. Hartnack, Inc. dba American Engine Installations, (“AEI”), is a Texas corporation incorporated on August 15, 1996, with a principal place of business at 2351 W. Northwest High, Suite 1302, Dallas, Texas 75220. Prior to April 2004, Defendant operated as K.D.E. Hartnack, Inc., dba American Engine Installation. Hartnack Marketing, Inc. is named as the “Franchisor” on AEI franchise agreements and lists the same address as K.M.R. Hartnack, Inc. John Hartnack is President of AEI. Defendant Hartnack has knowledge of, and acquiesces in, the practices and policies of AEI to such a degree as to make him personally liable for the deceptive trade practices alleged herein. In addition, Defendant Hartnack has personally engaged in the unlawful trade practices alleged herein.

4. Defendant Discount Engine Centers, Inc. (“Discount Engine”) is a Colorado corporation incorporated on November 24, 2003, with a principal place of business at 4850 Olive, Commerce City, Colorado 80022. Defendants Timothy and Charles Gemelli own equal partnership in Discount Engine.

5. Defendants Timothy and Charles Gemelli (“Gemellis”) co-own and operate an AEI franchise located at 4850 Olive, Commerce City, Colorado 80022. The Gemellis previously co-owned and operated an AEI franchise located at 3455 Astrozon Court, Colorado Springs, Colorado 80910, as well. Discount Engine was listed as the “Franchisee” in both AEI Franchise Agreements entered into by the Gemellis. The Gemellis have knowledge of, and acquiesce in, the practices and policies of AEI to such a degree as to make each of them personally liable for the deceptive trade practices alleged herein. In addition, Defendants Gemellis have personally engaged in the unlawful trade practices alleged herein.

JURISDICTION AND VENUE

6. Pursuant to § 6-1-103 and § 6-1-110(1), C.R.S. (2006), this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

7. The violations alleged herein were committed in part in Adams County, Colorado and Defendants Discount Engine's and the Gemellis' place of business is in Adams County. Therefore, venue is proper in Adams County, Colorado, pursuant to § 6-1-103, C.R.S., and Colo. R. Civ. P. 98 (2006).

RELEVANT TIMES

8. The conduct that gives rise to the claims for relief contained in this Complaint occurred beginning in the year 2003 and continues through the present.

9. This action is timely brought pursuant to § 6-1-115, C.R.S. (2006), in that it is brought within three years of the date on which false, misleading, and deceptive acts or practices occurred and/or were discovered, and the series of false, misleading, and deceptive acts are continuing.

PUBLIC INTEREST

10. Through the unlawful practices of their business, or occupation, Defendants have deceived, misled, and financially injured a number of Colorado consumers. Therefore, the Colorado Attorney General believes these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

GENERAL ALLEGATIONS

11. Defendant American Engine Installation sells and installs remanufactured and pre-owned engines. The Dallas Texas headquarters franchises AEI shops throughout the southeast, including two shops franchised to the Gemellis in Commerce City, Colorado and Colorado Springs, Colorado.

12. In February 2003, Defendant Timothy Gemelli was hired by AEI to open and manage an AEI shop in Commerce City. On or about December 9, 2004, Defendants Timothy and Charles Gemelli purchased from AEI the Commerce City shop and continued operating this shop through the present. The Gemellis also purchased and opened an AEI franchise in Colorado Springs on or about March 25, 2004, which they operated until selling the franchise on September 30, 2006.

13. Through the yellow pages, newspapers, and via its website, AEI advertises rebuilt engine installation. AEI advertisements provide a local area code phone number. However, the local call is routed to the AEI headquarters sales office in Dallas, Texas.

14. After obtaining the year, make, and model of the car, AEI sales representatives provide consumers with an estimate for a remanufactured/pre-owned engine installation. Colorado consumers are directed to deliver their vehicles to the Gemellis' shop.

I. Actual Repair Costs Greater Than Estimates

15. Consumers complain that the actual repair cost for their engine installation is substantially higher than the estimate provided to them by AEI. A review of over eighty repair transactions shows that the actual repair cost for an engine installation by the Gemellis is over \$3000, compared to an average estimate for engine installation of approximately \$2000. The average actual repair cost is more than fifty percent higher than the average initial estimate. At no time prior to accepting a consumer's deposit do Defendants inform the consumer that the final cost will likely be over a thousand dollars more than the initial estimate.

16. Customers learn of the higher repair cost after having paid a non-refundable deposit and after their engine has been removed from their car. Consumers claim they have little recourse but to pay the additional charges. If they decline the additional repairs, they lose their deposit and face additional charges for the reinstallation of their engine.

17. Defendants claim that their repair contract provides sufficient notice of the potential for increased costs. However, based upon misrepresentations, both express and implied at the time of the initial estimate and throughout the sale, consumers believe that the initial estimate is a good faith estimate of their eventual costs.

II. Misrepresentations as to Estimated Completion Time

18. In addition to increases in the estimated repair costs, consumers complain of inaccurate estimates of the repair completion time. Defendants' "General Terms and Conditions of work to be performed" informs consumers that the "estimated time to complete repairs is 5–10 working days (Monday-Friday)." The Gemellis routinely represent 10–14 days for engine installations. Consumers complain of engine installations taking two or three times longer than estimated. Frequently, Defendants fail to timely notify consumers of the delays, and consumers are forced to make numerous inquiries to determine when the repairs to their vehicles will be completed.

III. Misrepresentations as to Employment of ASE-Certified Mechanics

19. Defendants advertise their use of ASE-certified mechanics. ASE is an acronym for "Automotive Service Excellence." ASE certification can only come from the National Institute for Automotive Service Excellence after recognized training and testing.

ASE certification is regularly relied upon by consumers to ensure trained and skilled mechanics will be performing the repair work. The Gemellis' shops in Colorado Springs and Commerce City employed over 20 mechanics from March 2004 to the present. Only one was ASE certified in engine repair during that period.

20. The Dallas headquarters of AEI failed to monitor and assure that the Gemellis were using ASE-certified mechanics as advertised.

IV. Misrepresentation as to BBB Membership

21. Defendants' yellow page advertisement and website claim they are a member of the Better Business Bureau. Although the Dallas headquarters of AEI maintains BBB membership, neither of Gemellis' two shops has been a member of the BBB. The Gemellis' shop is not in good standing with the BBB due to a pattern of consumer complaints.

22. During the course of their business, vocation or occupation, Defendants violated § 6-1-105(b), (c), (i), (l), (u) and (pp), C.R.S. by, among other things:

- a. misrepresenting the estimated price of repair;
- b. misrepresenting the estimated time for repair;
- c. misrepresenting ASE certification;
- d. misrepresenting BBB membership;
- e. misrepresenting and/or failing to fully disclose the likelihood of additional costs associated with the engine installation;
- f. failing to timely notify consumers of changes in the expected completion date of the repair and of the new expected completion date; and
- g. violating the Colorado Motor Vehicle Repair Act, § 42-9-101, et. seq., C.R.S.

FIRST CLAIM FOR RELIEF

(False representations as to certification of services)

(False representations as to certification by another)

23. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

24. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have made false representations as to the certification of services they have advertised, in violation of § 6-1-105(1)(b) and (c), C.R.S. (2006).

25. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado.

SECOND CLAIM FOR RELIEF

(Advertising services with the intent not to sell them as represented)

26. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

27. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have made false representations regarding the services they have advertised and sold, in violation of § 6-1-105(1)(i), C.R.S. (2006).

28. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado.

THIRD CLAIM FOR RELIEF

(Making false or misleading statements of fact concerning the price of services)

29. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

30. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have made false representations regarding the services they have advertised and sold, in violation of § 6-1-105(1)(l), C.R.S. (2006).

31. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado.

FOURTH CLAIM FOR RELIEF

(Failing to disclose material information)

32. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

33. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have made false representations regarding the goods they have advertised and sold, in violation of § 6-1-105(1)(u), C.R.S. (2006). Specifically, Defendants failed to disclose that the actual cost of repair would likely be significantly higher than the “estimate” they provided.

34. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado.

FIFTH CLAIM FOR RELIEF
(Violation of § 42-9-101, C.R.S., et.seq.)

35. Plaintiff incorporates herein by reference all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

36. Through the above-described conduct in the course of their business, occupation or vocation, Defendants have violated § 42-9-104-106, C.R.S. (2006). Specifically, Defendants have:

- i) failed to provide an estimate that includes total estimated costs of repair, and failed to obtain proper consent for additional repairs, in violation of § 42-9-104;
- ii) failed to fully inform the consumer of the need, the cost, and the effects of disassembly in violation of § 42-9-104;
- iii) failed to properly notify consumers of changes in the expected completion date in violation of § 42-9-105; and
- iv) improperly charged or threatened storage fees in violation of § 42-9-106.

37. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado. Defendants’ violations of the Motor Vehicle Repair Act are actionable under § 6-1-105(1)(pp), C.R.S. (2006), as well.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against Defendants and the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, § 6-1-105 (b), (c), (i), (l), (u) and (pp), C.R.S. (2006).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with Defendants with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to § 6-1-110(1), C.R.S. (2006).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2000 per violation pursuant to § 6-1-112(1), C.R.S. (2006), or \$10,000 per violation pursuant to § 6-1-112(3), C.R.S. (2006).

F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to § 6-1-113(4), C.R.S. (2006).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

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Dated this 18th day of June, 2007.

JOHN W. SUTHERS
Attorney General

JAY B. SIMONSON, 24077*
Assistant Attorney General
OLIVIA C. DEBLASIO, 35867*
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*Counsel of Record

Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Fifth Floor, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **SUMMONS and COMPLAINT** upon all parties herein by delivery of same as follows:

Original to the Court on June 18, 2007

Subsequent delivery to the following parties:

Timothy and Charles Gemelli
c/o Ernest Gomez, 26321*
600 17th St., Ste. 2800 South
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303-623-7000
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Ronald Rossi, Esq.
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/s Orlando H. Martinez

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